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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,) CR No. 09-1344(A)-VBF
 15)
 Plaintiff,) GOVERNMENT'S OPPOSITION TO
 16) DEFENDANT AVANESSIAN'S MOTION FOR
 v.) RELEASE ON BOND PENDING TRIAL;
 17) MEMORANDUM OF POINTS AND
 JIRAIR AVANESSIAN,) AUTHORITIES; EXHIBITS
 18 aka "Jerry Avanesian,")
 aka "Jerry Avanes," and)
 19 FARHAD MASOUMIAN,)
 aka "Farhad Ma'sumiyan,")
 20 aka "Farhad Ma'sumian,")
 aka "Farhad Masouiman,")
 21 aka "Farhad Masumian,")
 aka "Farhad Masumiyan,")
 22 AMIRHOSSEIN SAIRAFI,)
 aka "Amir Hossein)
 23 Sairafi,")
)
 24 Defendants.)

25
 26 Plaintiff United States of America, by and through its
 27 counsel of record the United States Attorney for the Central
 28 District of California, hereby files this Opposition to Defendant
 Avanesian's Motion for Release on Bond Pending Trial. Pretrial

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **INTRODUCTION**

4 Defendant Avanesian has been detained pending trial, and
5 moves the Court to release him on bond. Defendant Avanesian has
6 significant connections and relationships with individuals in
7 Iran, the country from which he immigrated. Defendant Avanesian
8 has remained in extensive e-mail and telephone communication with
9 persons in Iran, maintained bank accounts and a store in Iran,
10 received hundreds-of-thousands of dollars, or more, from entities
11 in Iran, and has traveled there nearly annually since becoming a
12 Lawful Permanent Resident in 2000.

13 The vacuum pumps and other related equipment ("vacuum-pump
14 parts") defendant Avanesian purchased in the United States and
15 shipped to Iran have a number of advanced technological
16 applications. Even after a shipment sent by defendant Avanesian
17 was seized in February 2009 and a search warrant was executed in
18 April 2009 at defendant's residence and business, defendant
19 Avanesian or someone on behalf of his then-unincorporated
20 business XVAC had contacted a vacuum supplier to place an order.

21 Because of defendant's significant connections to Iran, and
22 his continued activity in procuring vacuum equipment, no
23 condition or combination of conditions will assure his appearance
24 as necessary and protect the safety of the community.

25 **II**

26 **FACTUAL BACKGROUND**

27 Defendant Avanesian is charged with exporting and
28 attempting to export vacuum-pump parts to Iran without the

1 required license, conspiring to do so, money laundering, and
2 smuggling vacuum-pump parts out of the United States contrary to
3 law or regulation, as set forth in further detail below.

4 Defendant Avanesian would communicate and coordinate with
5 co-defendants Farhad Masoumian and Amirhossein Sairafi about the
6 procurement, purchase, and export of vacuum-pump parts from the
7 United States to Iran via the United Arab Emirates ("U.A.E.").
8 Defendant Avanesian would receive from defendant Masoumian, who
9 would at times forward requests on behalf of defendant Sairafi,
10 and from others requests to obtain price quotations for goods and
11 technology sought by companies and persons in Iran. Defendant
12 Avanesian, doing business as XVAC, would obtain price quotations
13 for such vacuum-pump parts. After receiving orders from
14 defendant Masoumian and others, defendant Avanesian purchased
15 those parts using personal credit cards in his own name.

16 Defendant Avanesian then arranged to ship the goods and
17 technology to defendant Sairafi at AVAC FZC in the U.A.E., making
18 it appear that the ultimate destination of the vacuum-pump parts
19 was the U.A.E. The defendants, however, knew that the vacuum-
20 pump parts were destined for Iran, and the vacuum-pump parts were
21 then transshipped there from the U.A.E.

22 In arranging to export the parts from the United States,
23 defendant Avanesian falsely undervalued the shipments to the
24 U.A.E. to reflect a value under \$2,500 to avoid the filing
25 requirements of the Shipper's Export Declaration, the filing of
26 which may have caused greater scrutiny by United States Customs
27 and Border Protection Officers. Furthermore, defendant
28 Avanesian, after coordination between defendants Masoumian and

1 Sairafi, would re-label the contents of the shipments in shipping
2 paperwork to make the descriptions sound more generic and less
3 technical. This was also done in order to avoid detection or
4 interception by U.S. Customs and Border Protection.

5 Defendant AVANESSIAN also received international wire
6 transfers in amounts that were typically between \$75,000 and
7 \$150,000 from defendant Masoumian or others that funded in whole
8 or in part the purchase and export of the vacuum-pump parts
9 defendant Avaneasian was sending to Iran.

10 III

11 PRIOR PROCEEDINGS

12 The charges against defendant are set forth in the First
13 Superseding Indictment dated January 20, 2010. Defendant
14 Avaneasian is charged in Count One with violating 18 U.S.C. § 371
15 (Conspiracy to export vacuum-pump parts to Iran), in Counts
16 Fifteen through Thirty-Six with violating 50 U.S.C. § 1705 and 31
17 C.F.R. §§ 560.203, 560.204, and 560.701 (Exporting and attempting
18 to export vacuum-pump parts to Iran in violation of the
19 International Emergency Economic Powers Act, "IEEPA," and the
20 Iranian Transactions Regulations "ITR"), in Count Thirty-Seven
21 with violating 50 U.S.C. § 1705 and 31 C.F.R. §§ 560.203,
22 560.204, and 560.701 (Attempting to export vacuum-pump parts to
23 Iran in violation of IEEPA and the ITR), in Count Forty-Two with
24 violating 18 U.S.C. § 1956(a)(2)(A) and (h) (Conspiracy to
25 launder money), in Counts Forty-Three through Forty-Eight with
26 violating 18 U.S.C. § 1956(a)(2)(A) (Money laundering), in counts
27 Fort-Nine through Fifty-Four with violating 18 U.S.C. § 554
28 (smuggling vacuum-pump parts out of the United States contrary to

1 law or regulation), and in Count Fifty-Five with violating 18
2 U.S.C. § 554 (attempting to smuggle vacuum-pump parts out of the
3 United States in contrary to law or regulation).

4 Defendant was arrested on January 11, 2010.

5 Defendant's initial appearance occurred on January 11, 2010
6 before the Honorable Victor B. Kenton, United States Magistrate
7 Judge. At that initial hearing Judge Kenton ordered defendant
8 Avanesian detained pending trial. The Pre-Trial Services Agency
9 ("PSA") had recommended detention.

10 Defendant was then arraigned on the original Indictment,
11 which was filed on December 30, 2009, on January 18, 2010.
12 Defendant was arraigned on the First Superseding Indictment on
13 January 28, 2010 before the Honorable Valerie B. Fairbank, United
14 States District Judge, at which time a status conference was held
15 and a briefing and hearing schedule was set for defendant
16 Avanesian's Motion for Release on Bond Pending Trial.

17 IV

18 ARGUMENT

19 A. Standard of Review

20 This Court's review of the decision of the magistrate judge
21 is de novo. United States v. Koenig, 912 F.2d 1190, 1192-93
22 (9th Cir. 1990).

23 B. The Bail Reform Act

24 The Bail Reform Act of 1984 ("the Act") permits pretrial
25 detention of a defendant without bail where "no condition or
26 combination of conditions will reasonably assure the appearance
27 of the person as required and the safety of any other person and
28 the community." 18 U.S.C. § 3142(e). Detention is appropriate

1 where a defendant is either a danger to the community or a flight
2 risk; it is not necessary to prove both. United States v.
3 Motamedi, 767 F.2d 1403, 1406 (9th Cir. 1985); United States v.
4 Kouyoumdjian, 601 F. Supp. 1506, 1508-10 (C.D. Cal. 1985). A
5 finding that a defendant is a danger to the community must be
6 supported by clear and convincing evidence. 18 U.S.C. § 3142(f).
7 A finding that a defendant is a flight risk need only be
8 supported by a preponderance of the evidence. Motamedi, 767 F.2d
9 at 1406.

10 Several factors are relevant to the Court's consideration of
11 whether pretrial detention is appropriate: (1) the nature and
12 seriousness of the offense charged; (2) the weight of the
13 evidence against defendant; (3) the defendant's character,
14 physical and mental condition, family and community ties, past
15 conduct, history relating to drug or alcohol abuse, and criminal
16 history; (4) the nature and seriousness of the danger to any
17 person or to the community that would be posed by the defendant's
18 release. 18 U.S.C. § 3142(g); United States v. Winsor, 785 F.2d
19 755 (9th Cir. 1986); Motamedi, 767 F.2d at 1407.

20 The weight of the evidence is the least important of the
21 factors and the statute neither requires not permits a pretrial
22 determination that the person is guilty. Winsor, 785 F.2d at
23 757. However, the nature of the offense and the evidence of
24 guilt is relevant to indicate the likelihood that the person will
25 fail to appear or will pose a danger to the community. Id.

26 **C. Defendant is a Flight Risk**

27 Defendant Avnessian has maintained significant and
28 continuous contacts with Iran, and at this time no combination of

1 condition or combination of conditions will reasonably assure his
2 appearance at trial. Though members of defendant Avanesian's
3 family currently reside in this District and elsewhere in the
4 United States, his incentive and means to flee are apparent.

5 Defendant Avanesian's relationships and contacts with
6 persons and entities in Iran include the following:

- 7 1. Defendant Avanesian received approximately \$514,811.82
8 in wire transfers that originated in Iran, as alleged
9 in Counts Forty-Three through Forty-Eight of the First
10 Superseding Indictment;
- 11 2. Defendant Avanesian also maintains at least one
12 "parsian bank account" using "toomans," and at one
13 point directs an individual that "[f]or the money you
14 could keep there put on that account." (Exhibits A-D,
15 all of which were seized from defendant Avanesian's
16 computer pursuant to a search warrant; Exhibit D
17 contains a Farsi-to-English translation);¹
- 18 3. Defendant Avanesian appears to have maintained a
19 "store in Tehran" years after he immigrated to the
20 United States. (Exhibit E);
- 21 4. Defendant Avanesian was in phone contact with Iran
22 approximately 275 times between January 2008 and May
23 2009, according to documents obtained from
24 telecommunications carriers and from materials seized
25 pursuant to a search warrant;

26
27
28 ¹ Tomans are commonly and informally used to refer to 10 Rials,
which is the official currency of Iran.

1 5. Defendant Avanesian was in e-mail contact over 500
2 times with individuals believed to be in Iran between
3 January 2008 and January 2009, according to documents
4 seized from defendant Avanesian's computer. Examples
5 of such e-mails are attached hereto as Exhibits A-C, F;

6 6. Based on defendant Avanesian's passport, he has
7 traveled to Iran at least eight times since 2000, when
8 he obtained Lawful Permanent Resident status. (Exhibit
9 G). Defendant Avanesian, however, had told the Pre-
10 Trial Services Agency before his initial appearance
11 that he only once recently travelled to Iran.

12 7. Prior to his immigration to the United States,
13 defendant Avanesian had served in compulsory military
14 service, and had worked in a laboratory in Iran.
15 (Exhibit H).

16 Furthermore, the United States has no extradition treaty
17 (nor normal diplomatic relations) with Iran at this time. If
18 defendant Avanesian were to flee to Iran, he would be beyond the
19 reach of United States law enforcement and would effectively
20 escape prosecution.

21 Defendant Avanesian argues that he "most tellingly" allowed
22 his Iranian passport to expire. Defendant Avanesian, however,
23 had previously allowed his passport to expire on February 2,
24 2005. He then received an extension on March 6, 2005.
25 Furthermore, it expired only this week - February 2, 2010 - three
26 weeks after he had been taken into custody. (Exhibit G).

27 If convicted at trial, defendant Avanesian stands to face a
28 significant amount of time in prison. Pursuant to U.S.S.G.

1 § 2M5.1(a)(1), defendant's base offense level would be 26,
2 yielding an advisory guidelines sentence of 63-78 months.
3 Section 2M5.1(a)(1) applies "if (A) national security controls or
4 controls relating to the proliferation of nuclear, biological, or
5 chemical weapons or materials were evaded; or (B) the offense
6 involved a financial transaction with a country supporting
7 international terrorism." Defendant Avanessian would satisfy
8 either subsection. First, the Executive Order initiating the
9 current sanctions regime against Iran expressly stated that "the
10 actions and policies of the Government of Iran constitute an
11 unusual and extraordinary threat to the national security,
12 foreign policy, and economy of the United States." See Executive
13 Order 12957 (March 15, 1995) (emphasis added); see also United
14 States v. McKeeve, 131 F.3d 1 (1st Cir. 1997)(holding that the
15 embargo against Libya was a "national security control" and
16 ruling that a base offense level of 26 applied under § 2M5.1 to
17 any goods sent to the embargoed country "whether or not the goods
18 shipped actually are intended for some innocent use"); United
19 States v. Min, No. 99 CR. 875 KTD, 2000 WL 1576890, *2 (S.D.N.Y.
20 Oct. 23, 2000) holding that in violation of embargo against North
21 Korea § 2M5.1(a)(1) applied and that "[t]he nature of the goods,
22 innocuous or other, is not controlling").

23 If convicted of the money laundering counts, defendant may
24 face a higher sentence with base offense level of 32, depending
25 on the total amount of money laundered through defendant's
26 relevant conduct, yielding an advisory guidelines sentence of
27 121-151 months, under U.S.S.G. §§ 2S1.1(a)(2), (b)(1)(B)(iii),
28 (b)(2)(B) and 2B1.1(b)(1)(I).

1 Furthermore, if convicted at trial of the offenses alleged
2 in the First Superseding Indictment, defendant would very likely
3 lose his status as a Lawful Permanent Resident. See, e.g., 8
4 U.S.C. § 1101(a)(43)(D) (defining an aggravated felony to include
5 a violation of 18 U.S.C. § 1956 if the amount of funds was more
6 than \$10,000). "An alien convicted of an aggravated felony shall
7 be conclusively presumed to be deportable from the United
8 States." 8 U.S.C. § 1228(c). When an alien such as defendant
9 Avnessian is convicted of an aggravated felony, "the Attorney
10 General shall provide for the initiation and, to the extent
11 possible, the completion of removal proceedings, and any
12 administrative appeals thereof, in the case of any alien
13 convicted of an aggravated felony before the alien's release from
14 incarceration for the underlying aggravated felony." Id.
15 § 1228(a)(3)(A). If defendant Avnessian would simply be
16 deported following a conviction and serving whatever sentence the
17 Court imposed, he has significant incentive to flee to Iran
18 before sustaining a conviction and spending time in prison.

19 Defendant Avnessian offers to post at least three
20 properties with total value of over one million dollars. (Motion
21 at 5.) Defense counsel has offered to give further details
22 concerning the value, ownership, and location of those
23 properties, but as of the filing of this Opposition the
24 government does not have those details. Even with that
25 information, that value alone would not secure defendant's
26 appearance at trial. Though approximately \$500,000 in overseas
27 wire transfers received by defendant Avnessian are charged in
28 the First Superseding Indictment, he received in excess of

1 \$1,000,000 of overseas wire transfers since 2006. Whatever the
2 identity of the source of defendant's overseas wires, it appears
3 to have the resources to absorb the loss of equity in the
4 proposed properties.

5 **D. Defendant Poses a Danger to the Community**

6 Defendant argues that the items he exported were available
7 on eBay and other Internet sites. (Motion at 4). Though some of
8 the parts defendant purchased and exported were available on
9 eBay, the parts defendant was charged with exporting were
10 purchased directly from vacuum-pump part suppliers and
11 manufacturers. Furthermore, defendant represented to some
12 manufacturers or suppliers that he would not be exporting them
13 from the United States, let alone to Iran. (Exhibit I).

14 As set forth in Executive Order No. 12957 (Mar. 15, 1995)
15 "the actions and policies of the Government of Iran constitute an
16 unusual and extraordinary threat to the national security,
17 foreign policy, and economy of the United States." Sending any
18 materials to Iran assists a regime that presents a danger to the
19 national security of the United States.

20 The materials at issue in this case, the vacuum-pump parts
21 purchased and exported by defendant Avanesian, are not just any
22 materials and have a number of advanced technological
23 applications. The government is continuing to evaluate the
24 possible and likely uses of the vacuum-pump parts that defendant
25 Avanesian purchased and exported to Iran, but they are by no
26 measure the equivalent of "cement." (Motion at 4; see, e.g.,
27 Exhibit F.)
28

1 In February of 2009, a shipment defendant Avanesian was
2 sending to Iran via the U.A.E. was seized at the freight
3 forwarder. Following that seizure, federal search warrants were
4 executed on April 17, 2009 at defendant's business and residence.
5 Even after these events, in approximately August or September of
6 2009, defendant Avanesian or someone else on behalf of the
7 company he operated, XVAC,² contacted a vacuum-pump part supplier
8 in order to place an order. (Exhibit J). Given that the
9 investigation has not reflected sales by XVAC to domestic
10 customers, it appears defendant has not ceased the conduct
11 charged in the First Superseding Indictment.

12 Finally, defendant Avanesian requests a closed hearing to
13 address the Court. (Motion at 4). Without information as to the
14 nature of the information the defense intends to present to the
15 Court, the government objects to a closed hearing, though the
16 government anticipates that certain matters may be appropriate to
17 address at sidebar.

18 IV

19 CONCLUSION

20 As former President Clinton stated in Executive Orders Nos.
21 12957 (Mar. 15, 1995) and 12959 (May 6, 1995), the actions and
22 policies of the Government of Iran present an "unusual and
23 extraordinary threat to the national security," and set forth the
24 regulations that defendant Avanesian is charged with violating
25 in the First Superseding Indictment.

26
27
28 ² Before his initial appearance, defendant Avanesian had said
that he was employed at XVAC for the last year. Defendant
Avanesian has in fact been operating XVAC since at least 2006.

1 For the reasons set forth herein, the government
2 respectfully requests that this court order defendant detained
3 pending trial.

4 DATED: February 5, 2010

Respectfully submitted,

5 GEORGE S. CARDONA
6 Acting United States Attorney

7 CHRISTINE C. EWELL
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
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